

1 LATHAM & WATKINS LLP
Marvin S. Putnam (212839)
2 *marvin.putnam@lw.com*
Jessica Stebbins Bina (248485)
3 *jessica.stebbinsbina@lw.com*
10250 Constellation Blvd., Suite 1100
4 Los Angeles, California 90067
Telephone: (424) 653-5500
5 Facsimile: (424) 653-5501

6 *Attorneys for Specially Appearing*
Defendant Elliott Broidy
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11

12 SHERA BECHARD,

13 Plaintiff,

14 v.

15 ELLIOTT BROIDY, an individual; KEITH
DAVIDSON, an individual; MICHAEL
16 AVENATTI, an individual; DAVIDSON &
ASSOCIATES, PLC, a professional limited
17 liability company; and DOES 1 through 20,
inclusive,

18 Defendants.
19

20
21
22 KEITH M. DAVIDSON & ASSOCIATES,
PLC,

23 Cross-Claimant,

24 v.

25 SHERA BECHARD; and ELLIOTT BROIDY,

26 Cross-Defendants.
27
28

Case No. BC712913

Hon. Elizabeth A. White (Dept. 48)

**SPECIALY APPEARING DEFENDANT
ELLIOT BROIDY'S REPLY
MEMORANDUM IN SUPPORT OF HIS
MOTION TO COMPEL ARBITRATION**

Hearing Date: Sept. 7, 2018
Time: 9:00 a.m.
Dept.: 48

HEARING ORDERED BY THE COURT

Action Filed: July 6, 2018
Trial Date: None Set
Dept: 48

1 **I. INTRODUCTION.**

2 Plaintiff does not contest that she signed a valid arbitration agreement encompassing this
3 dispute. Nor does she contest that California public policy strongly favors the enforcement of
4 that binding agreement, that this strong policy has very few exceptions, and that virtually none of
5 those exceptions apply in this case. Instead, plaintiff relies solely on section 1281.2(c) of the
6 California Code of Civil Procedure, which is recognized to be a “limited exception” to
7 arbitrability, and asserts it precludes enforcement of her binding arbitration agreement here.

8 Section 1281.2(c), however, does not prevent this Court from enforcing plaintiff’s
9 binding agreement to arbitrate, for at least two reasons. First, the section applies only when a
10 plaintiff demonstrates that there are *non-arbitrable third party claims* that risk *conflicting*
11 *rulings*. Plaintiff has not come close to meeting this burden. Mr. Davidson, as plaintiff’s agent
12 and a purported third party beneficiary of the settlement agreement, is bound by its arbitration
13 clause, just as plaintiff is. And plaintiff’s claims against the only actual third party, Mr.
14 Avenatti, raise no risk of inconsistency. Contrary to plaintiff’s claims, there are only *two*
15 possible parties who disclosed the settlement agreement’s terms: plaintiff herself (which she
16 denies) or her attorney and agent Mr. Davidson. Mr. Avenatti **cannot** be the original discloser;
17 as a non-party to the settlement agreement, someone had to disclose it *to* him, even if he
18 thereafter republished it to others. The question of “was there a breach, and if so, who is
19 responsible,” can be fully answered in the arbitration amongst the parties thereto.

20 Second, even if section 1281.2(c) were to apply, it would *not* mandate the denial of
21 arbitration. Plaintiff’s opposition ignores half the statute it invokes. Section 1281.2(c), even
22 when it applies, merely gives the Court the *option* of a variety of remedies, including ordering
23 the arbitrable claims to arbitration and staying any remaining claims—a solution that is
24 manifestly appropriate here. There is no reason—none—to require the parties to litigate their
25 claims in this Court rather than their agreed private forum. The Court should confirm that
26 plaintiff is bound to arbitrate her claims as she agreed to do, and order this case to arbitration.

27
28

1 **II. SECTION 1281.2(C) DOES NOT APPLY.**

2 The California Supreme Court has held that section 1281.2(c) is a rare exception to the
3 general policy in favor of arbitration that should be applied only in “peculiar situation[s].”
4 *Cronus Investments, Inc. v. Concierge Servs.*, 35 Cal. 4th 376, 393 (2005); *see also Laswell v.*
5 *AG Seal Beach, LLC*, 189 Cal. App. 4th 1399, 1405 (2010). Plaintiff, however, seeks to
6 transform that limited exception into a broad one, and a peculiar situation into a commonplace
7 one—thereby destabilizing arbitration agreements everywhere and undermining California’s
8 “strong public policy in favor of arbitration.” *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 9
9 (1992).

10 In contrast to plaintiff’s boundless application of the exception, the Supreme Court has
11 specifically held that section 1281.2(c) is “*not* a special rule limiting the authority of arbitrators,”
12 or “a provision designed to limit the rights of parties who choose to arbitrate or otherwise to
13 discourage the use of arbitration.” *Cronus*, 35 Cal. 4th at 393 (emphasis in original). Rather, it
14 is “an evenhanded law” that applies only where “there is a possibility of conflicting rulings on a
15 common issue of law or fact” as between the arbitration and a concurrently pending court case.
16 *Id.* at 383, 393. To protect parties’ settled expectation in the enforceability of their binding
17 agreements to arbitrate, a plaintiff bears the burden of establishing that the limited exception of
18 section 1281.2(c) applies. *See Engalla v. Permanente Med. Grp., Inc.*, 15 Cal. 4th 951, 972
19 (1997) (“[A] party opposing the petition [to compel arbitration] bears the burden of proving by a
20 preponderance of the evidence any fact necessary to its defense.”); *see also Moncharsh*, 3 Cal.
21 4th at 9 (“Typically, those who enter into arbitration agreements expect that their dispute will be
22 resolved without necessity for any contact with the courts.”) (citation omitted).

23 Plaintiff cannot meet that burden here. To the contrary, section 1281.2(c) is inapplicable
24 to this case because no “proceeding with a third party” raises any “possibility of conflicting
25 rulings” within the meaning of the statute. Code Civ. Proc. § 1281.2(c). Plaintiff, Mr. Davidson,
26 and Mr. Broidy are all bound to arbitration, and plaintiff’s claims against Mr. Avenatti—to the
27 extent they survive—do not create any risk of conflict.

28

1 **A. Plaintiff’s Dispute With Mr. Davidson Is Not A Third Party Judicial Action**
2 **Within The Meaning Of Section 1281.2(c).**

3 Plaintiff’s opposition relies heavily upon her assertion that her attorney, Mr. Davidson, is
4 a third party to the arbitration agreement. *See* Opp. at 5, 8. Thus, plaintiff contends, section
5 1281.2(c) applies because she has to litigate her claims against Mr. Broidy in arbitration and her
6 claims against Mr. Davidson in court. In fact, however, Mr. Davidson is *not* a third party within
7 the meaning of section 1281.2(c). To the contrary, Mr. Davidson has *also* sued Mr. Broidy for
8 breach of the settlement agreement, asserting that he is a third party beneficiary thereunder
9 (which renders his claim subject to arbitration as well). *See* Davidson Cross-Compl. ¶¶ 2, 3, 20
10 (attached as Exhibit 1 to Decl. of Jessica Stebbins Bina (“Bina Decl.”) filed concurrently
11 herewith); *see also* Mot. to Compel Arb. of Davidson’s Claim for Declaratory Relief (filed Aug.
12 30, 2018) (“Davidson Arbitration Motion”) (attached as Exhibit 2 to Bina Decl.); *see also Harris*
13 *v. Superior Court*, 188 Cal. App. 3d 475, 478 (1986) (third-party beneficiaries are bound to the
14 arbitration provisions of the contracts they benefit from).

15 Plaintiff contends that *her* claims against Mr. Davidson are not subject to a separate
16 contractual agreement to arbitrate, and that Mr. Davidson is therefore a third party for purposes
17 of section 1281.2(c). But this is incorrect as a matter of well-established California law. The
18 phrase “third party” as used in section 1281.2(c) means a third-party litigant “that is not bound
19 by the arbitration agreement” in question. *RN Sol., Inc. v. Catholic Healthcare West*, 165 Cal.
20 App. 4th 1511, 1519 (2008). Accordingly, anyone with a right or obligation to arbitrate their
21 claims *cannot* be a third party as a matter of law. *See Rowe v. Exline*, 153 Cal. App. 4th 1276,
22 1290 (2007) (holding that “[b]ecause [defendants] may enforce arbitration of the claims against
23 them, they are not ‘third parties’ within the meaning of section 1281.2, subdivision (c),” which
24 “therefore does not apply, and the trial court erred in denying arbitration on this ground”).

25 Thus, the question is not whether Mr. Davidson is a “third party” in the colloquial sense,
26 but whether he is “*bound by the arbitration agreement*” or has any power to “enforce arbitration
27 of [his] claims.” *RN Sol., Inc.*, 165 Cal. App. 4th at 1519 (emphasis added); *Rowe*, 153 Cal.
28 App. 4th at 1290. And as Mr. Broidy also explains in the concurrently filed Davidson

1 Arbitration Motion (set for hearing November 15, 2018), Mr. Davidson is indisputably bound to
2 arbitrate his claim against Mr. Broidy—pursuant to the *same arbitration agreement* to which
3 plaintiff concedes she is also bound. Specifically, Mr. Davidson is bound to arbitration for two
4 independent reasons: the doctrine of equitable estoppel, and his claimed status as a third-party
5 beneficiary to the settlement agreement. *See, e.g., JSM Tuscan, LLC v. Superior Court*, 193
6 Cal. App. 4th 1222, 1239-40 (2011) (equitable estoppel); *Harris v. Superior Court*, 188 Cal.
7 App. 3d 475, 478 (1986) (third-party beneficiary). Each of these factors separately and
8 independently renders Mr. Davidson categorically incapable of serving as a “third party” for
9 purposes of section 1281.2(c). Moreover, even if not a separate basis to compel Mr. Davidson to
10 arbitrate, *Benasra v. Marciano*, 92 Cal. App. 4th 987, 991 (2001), the fact that Mr. Davidson was
11 an *agent* for a bound principal gives him the right to *enforce* the agreement (if he wants to) that
12 provides yet another basis to disqualify him as a third party for the purposes of section 1281.2(c).
13 *See Dryer v. Los Angeles Rams*, 40 Cal. 3d 406, 418 (1985) (holding that nonsignatories were
14 “entitled to the benefit of the arbitration provisions” in their capacities “as agents”); *Rowe*, 153
15 Cal. App. 4th at 1290 (parties who can enforce arbitration are not third parties within meaning of
16 section 1281.2(c)).¹

17 None of this is controversial; it is settled law. In fact, the Court of Appeal squarely
18 rejected an attempt to invoke section 1281.2(c) in precisely these circumstances, where the
19 proposed “third parties” were, like Mr. Davidson, both agents to bound parties and intended
20 beneficiaries to a contract containing an arbitration agreement. The court found that section
21 1281.2(c) did not apply because each co-defendant was “bound by the arbitration agreement both
22 as an agent-employee” of a party to the arbitration agreement, “and as a third party beneficiary”
23 to the contract containing the arbitration agreement. *RN Sol., Inc.*, 165 Cal. App. 4th at 1520.²
24 The same outcome is required here.

25 _____
26 ¹ For the same reasons, plaintiff’s new speculation that *Mr. Broidy’s* attorney, Mr. Cohen,
disclosed the agreement, *see Opp.* at 6, likewise does not bring the case within section 1281.2(c).

27 ² Additionally, and in a separate sense, Mr. Davidson *cannot* be a third party for the purpose of
28 the plaintiff’s interference claim as a matter of contract law because agents “cannot be held liable
for inducing a breach” against their principals. *Mintz v. Blue Cross of Cal.*, 172 Cal. App. 4th

1 Plaintiff cannot plead her way around this bar by asserting non-arbitrable claims against
2 Mr. Davidson. “A trial court does not have discretion to deny arbitration under Code of Civil
3 Procedure section 1281.2, subdivision (c), absent the presence of a third party, and a plaintiff’s
4 inclusion of a nonarbitrable cause of action in the complaint is not grounds to deny arbitration
5 under the third-party exception.” *Laswell*, 189 Cal. App. 4th at 1409. Thus, the fact that
6 plaintiff seeks to bring additional claims against Mr. Davidson “is not sufficient by itself to
7 invoke the trial court’s discretion to deny arbitration under Code of Civil Procedure section
8 1281.2, subdivision (c)[.]” *Id.*; *see also RN Sol., Inc.*, 165 Cal. App. 4th at 1521 (“The mere fact
9 that some claims are arbitrable and some are not is surely not the ‘peculiar situation’ meant to be
10 addressed by section 1281.2(c) according to our Supreme Court.”).

11 Mr. Davidson is subject to arbitration, and Ms. Bechard is perfectly able (and required) to
12 bring her claims against Mr. Davidson in that forum.³ Accordingly, plaintiff’s claims against
13 Mr. Davidson do not bring this case within section 1281.2(c), and plaintiff cannot avoid
14 arbitration through the limited exception it provides on the basis of his involvement with this
15 lawsuit.

16
17
18
19
20
21
22
23
24
25
26
27
28

1594, 1604 (2009). “[O]nly a stranger to a contract may be liable for intentionally interfering
with [it],” and “the representative of a contracting party may not be held liable for the tort of
interfering with its principal’s contract.” *Id.* at 1603, 1607.

Similarly, as plaintiff acknowledges, *see* Opp. at 6, a breach by *Mr. Davidson* would
excuse Mr. Broidy’s performance to the same degree as a breach by plaintiff. *See Sanchez v.*
Cty. of San Bernardino, 176 Cal. App. 4th 516, 518, 530 (2009) (former county employee was
“excused” from further performance of confidential settlement agreement with San Bernardino
County after “county representatives” breached agreement by disclosing “facts, events, and
issues which gave rise” to the settlement to the press); *see also* Cal. Civ. Code § 2338 (“Unless
required by or under the authority of law to employ that particular agent, a principal is
responsible to third persons for the negligence of his agent in the transaction of the business of
the agency, including wrongful acts committed by such agent in and as a part of the transaction
of such business, and for his willful omission to fulfill the obligations of the principal.”). While
plaintiff might have indemnity or fiduciary claims against Mr. Davidson in that instance, **Mr.**
Broidy would not be required to bear the burden of misconduct by *plaintiff’s agent*.

³ In addition, because plaintiff will be in arbitration with Mr. Davidson, she will have full rights
under the applicable arbitrable rules to bring *any* claims against him, regardless of whether those
claims fall directly within the scope of the arbitration agreement. *See* Broidy Decl. ¶ 3
(indicating that the parties selected JAMS rules); JAMS Rule 10, *available at*
<https://www.jamsadr.com/rules-comprehensive-arbitration/#Rule-10> (allowing joinder of all of
plaintiff’s claims against Mr. Davidson). Plaintiff therefore cannot argue that she has any other,
nonarbitrable claims against Davidson.

1 **B. The Claims Against Mr. Avenatti Do Not Risk Conflicting Judgments.**

2 That leaves Mr. Avenatti. At the outset, it is hardly clear that Mr. Avenatti will remain
3 involved with this lawsuit at all. *See* Avenatti’s Spec. Mot. to Strike (filed Aug. 13, 2018). If
4 the Court grants Mr. Avenatti’s motion and dismisses him from the case, that would end the
5 discussion by eliminating the only remaining “third party,” and close the door on Plaintiff’s
6 attempt to evade her arbitration agreement with Mr. Broidy. *See RN Sol., Inc.*, 165 Cal. App. 4th
7 at 1521 (holding that where “all of the parties involved in the lawsuit are bound by the arbitration
8 agreement, the fundamental condition for the application of section 1281.2(c)—a pending court
9 action or special proceeding between a party to the arbitration agreement and a third party—is
10 absent”).

11 But even if Mr. Avenatti remains in the case, there is no possibility of a conflicting
12 ruling in the sense that the term is used by section 1281.2(c). The California Supreme Court has
13 definitively construed section 1281.2(c) “[t]o avoid the possibility of contradictory *outcomes*”
14 and “minimize the potential for contradictory *judgments*.” *Cronus Investments, Inc. v. Concierge*
15 *Servs.*, 35 Cal. 4th 376, 382, 392 (2005) (emphasis added) (quoting *Volt Info. Scis., Inc. v. Bd. of*
16 *Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 476 n.5 (1989)); *see also Mount Diablo*
17 *Med. Ctr. v. Health Net of California, Inc.*, 101 Cal. App. 4th 711, 717 (2002) (“Section
18 1281.2(c) authorizes the court to refuse to enforce a contractual arbitration provision if
19 arbitration threatens to produce a *result* that may conflict with the *outcome* of related litigation
20 not subject to arbitration”) (emphasis added).

21 To invoke section 1281.2(c), “Plaintiffs must point to specific allegations in their
22 complaint or other evidence in the record showing how separate transactions regarding separate
23 properties and funds amount to a series of related transactions *and* how the claims regarding
24 those separate transactions present the possibility of conflicting rulings on legal or factual issues
25 common to the claims arising from those separate transactions.” *Acquire II, Ltd. v. Colton Real*
26 *Estate Grp.*, 213 Cal. App. 4th, 959, 974 (2013) (emphasis in original). Plaintiff “cannot defeat”
27 Mr. Broidy’s “contractual right to arbitration by simply joining [parties] who agreed to
28 arbitration with [a party] who . . . did not agree to arbitration,” and claiming an insoluble conflict

1 as a result. *Id.* at 975. Rather, she must actually establish the possibility that arbitration
2 “threatens to produce a result” that would “conflict with the outcome of related litigation.”
3 *Mount Diablo*, 101 Cal. App. at 717.

4 Plaintiff has not, and cannot, do this with regard to her claims against Mr. Avenatti.
5 Although plaintiff conclusively asserts that her claims against Mr. Avenatti raise a potential for
6 conflict, the bulk of her opposition in fact regards Mr. Davidson. Mr. Avenatti is not a party to
7 the settlement agreement, and thus *could not* breach it. Nor could any action by Mr. Avenatti, a
8 stranger to the settlement agreement, excuse the performance of the parties thereunder. To the
9 contrary, the question plaintiff claims is central—“whether the contract was breached,” and who
10 breached it—can and will be fully answered in arbitration by and among plaintiff, Mr. Broidy,
11 and Mr. Davidson.

12 Section 1281.2(c)’s “conflicting ruling” language refers exclusively to contradictory
13 “outcomes” or “judgments” that could flow from the complaint’s well-pleaded causes of action.⁴
14 *Cronus Investments, Inc.*, 35 Cal. 4th at 392, 393. Plaintiff brings two causes of action against
15 Mr. Avenatti, and neither provides a basis to invoke the exception, as neither creates the
16 possibility of a contradictory judgment.

17 Plaintiff’s first claim, that Mr. Avenatti “conspired” with Mr. Davidson to breach a
18 fiduciary duty to Ms. Bechard, can be disregarded for purposes of the section 1281.2(c) analysis,
19 because it is facially invalid as a matter of law and thus cannot yield any kind of judgment, let
20 alone a “contradictory” one. It is well-settled that “a nonfiduciary cannot conspire to breach a
21 duty owed only by a fiduciary.” *Am. Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal. App.
22 4th 1451, 1474 (2014). Plaintiff never alleges that Mr. Avenatti owed her any duty at all, let
23

24 ⁴ This is, of course, the only reasonable interpretation of the term “ruling,” which is “an outcome
25 of a court’s decision” that is “ordinarily used to signify the outcome of applying a legal test,” not
26 an opinion as to merely contextual (and inconsequential) background facts. See “RULING,”
27 Black’s Law Dictionary (10th ed. 2014). It is also, as the United States Supreme Court ruled in
28 the landmark *Volt* case, the necessary construction to preserve the delicate balance of federalism
between the California Arbitration Act and the Federal Arbitration Act. See *Volt*, 489 U.S. at
476 n.5 (suggesting that to construe section 1281.2(c) as extending beyond “contradictory
judgments” would raise questions regarding the California Arbitration Act’s preemption under
the Supremacy Clause).

1 alone a fiduciary duty that could give rise to her cause of action. *Cf.* Compl. ¶¶ 69-74. That is
2 fatal to her conspiracy claim. *See Mosier v. S. Cal. Phys. Ins. Exch.*, 63 Cal. App. 4th 1022,
3 1048 (1998) (“[A] party who is not personally bound by the duty violated may not be held liable
4 for civil conspiracy even though it may have participated in the agreement underlying the
5 injury.”).

6 Plaintiff’s second cause of action against Mr. Avenatti—that Mr. Avenatti tortiously
7 interfered with the settlement agreement—likewise does not create any risk of a contradictory
8 judgment because the elements of that claim do not overlap with the elements of plaintiff’s
9 arbitrable claims. *Cf. Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990)
10 (elements of tortious interference include (1) a valid contract, (2) defendant’s knowledge of this
11 contract, (3) defendant’s intentional acts to induce a breach or disrupt this contract, (4) actual
12 breach or disruption, and (5) resulting damage). The claim does not turn on *the identity* of the
13 person who disclosed the settlement agreement in the first instance. Thus, any finding of fact on
14 this issue on this claim in the judicial forum would be surplusage, not a conflicting “ruling.”
15 And any judgment on the issue of breach in the arbitral forum would not foreclose plaintiff’s
16 claims against Mr. Avenatti—plaintiff could seek to hold Mr. Avenatti liable for his actions
17 *regardless* of who disclosed the settlement agreement’s existence to him.

18 Mr. Avenatti’s participation, or lack thereof, in the settlement agreement’s disclosure
19 does not affect the rights and obligations of plaintiff, Mr. Broidy, or Mr. Davidson. Nor does the
20 question of who breached mandate or preclude liability against Mr. Avenatti. Moreover, there is
21 no risk that plaintiff will be left without a remedy, as all the potential contractual breaching
22 parties will be in the arbitration. Plaintiff has thus failed to demonstrate the possibility of
23 conflicting rulings even if Mr. Avenatti remains in the case. For that reason, the exception in
24 section 1281.2(c) cannot apply.

25 **III. EVEN IF THE SECTION APPLIES, THE COURT SHOULD ORDER**
26 **ARBITRATION AND STAY THE REMAINING CLAIMS.**

27 Even were the Court to find otherwise, it should not take the drastic remedy proposed by
28 plaintiff and discard the arbitration agreement entirely. As the legislature made clear in two

1 additional paragraphs at the end of section 1281.2, “finding that there is a possibility of
2 inconsistent rulings on common questions does not conclude the analysis[.]” *Metis Dev. LLC v.*
3 *Bohacek*, 200 Cal. App. 4th 679, 692 (2011). “[T]he statute gives the court several options,”
4 including “staying the arbitration pending disposition of nonarbitrable claims in the court, or
5 staying the litigation pending completion of the arbitration.” *Id.* (citing *Rodriguez v. Am. Techs.,*
6 *Inc.*, 136 Cal. App. 4th 1110, 1114–1115 (2006). Before dispensing with arbitration altogether,
7 the Court must decide between these “several options.” Failing to consider these alternatives is
8 an abuse of discretion. *Id.* at 690 (abuse of discretion to deny arbitral forum altogether under
9 section 1281.2(c) when no evidence that staying arbitration, or another alternative, would not
10 have sufficed to avert risk of conflict).

11 “To deny arbitration due to a possibility of conflicting rulings on common issues under
12 section 1281.2, subdivision (c), there must be not only the possibility of conflicting rulings, but a
13 determination that this possibility should lead to the denial of arbitration, rather than one of the
14 other alternatives set forth in the statute.” *Id.* at 690; *accord Defrees v. Kirkland*, Nos. CV 11-
15 4272 GAF, CV 11-4574 GAF, 2012 WL 12883971, at *6 (C.D. Cal. Jan. 17, 2012), *aff’d*, 579 F.
16 App’x 538 (9th Cir. 2014) (holding that court, prior to denying arbitration, “should explain why
17 the denial of arbitration is the best of the options available”). In *Metis*, the Court of Appeal
18 reversed a trial court when it opted to deny arbitration outright, where “there [was] no indication
19 why the possibility of conflicting rulings as to [third parties] could not also be resolved by
20 staying the claims against them.” *Metis*, 200 Cal. App. 4th at 693 (explaining that “an abuse of
21 discretion may be found when the court proceeds upon a mistaken premise or a factual finding
22 not supported by substantial evidence”). This preference to preserve arbitration makes sense in
23 view of California’s “strong public policy in favor of arbitration.” *Moncharsh*, 3 Cal. 4th at 9.

24 In this case, there is no reason the Court could not resolve any potential conflict by
25 issuing a stay of the judicial proceedings while arbitration proceeds. Especially given the
26 privacy rights involved, and the intentionally confidential character of the arbitral forum Mr.
27 Broidy bargained for, the contractual commitment between Mr. Broidy and Ms. Bechard should
28 be honored to the extent possible. Equity, if nothing else, requires the Court to weigh the harm

1 to Mr. Broidy’s constitutional and contractual rights that voiding arbitration would impose. *See*
2 *Atlas Plastering, Inc. v. Superior Court*, 72 Cal. App. 3d 63, 69 (1977) (because a motion to
3 compel arbitration “is in essence a suit in equity to compel specific performance of a contract,”
4 equitable considerations apply). It would be manifestly unjust to strip Mr. Broidy of these rights
5 when other remedies are available.

6 **IV. CONCLUSION.**

7 For the foregoing reasons, Mr. Broidy respectfully requests that this Court order plaintiff
8 to submit her dispute with Mr. Broidy to arbitration on the terms of the settlement agreement,
9 and stay the entire action pending resolution of Mr. Broidy’s motion to compel arbitration of Mr.
10 Davidson’s cross-claim, at which point it should order all claims by and among plaintiff, Mr.
11 Davidson, and Mr. Broidy to arbitration. To the extent the Court finds risk of a possible conflict
12 pursuant to section 1281.2(c) as to any remaining claims, Mr. Broidy would ask the Court to
13 issue a stay, rather than deny arbitration altogether.

14 Dated: August 30, 2018

LATHAM & WATKINS LLP
Marvin S. Putnam
Jessica Stebbins Bina

15
16
17 By _____
18 Jessica Stebbins Bina
19 Attorneys for Specially Appearing
20 Defendant Elliott Broidy
21
22
23
24
25
26
27
28

